

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff(s),

v.

SAMUEL DAVIS,

Defendant(s).

Case No. 2:09-CR-78 JCM (GWF)

ORDER

Presently before the court is the government's motion for the court to enter the attached final order of forfeiture. (Doc. # 418). No response has been filed, and the deadline to respond has now passed.

On March 25, 2011, defendant Samuel Davis ("defendant") pled guilty to the charges against him. (Doc. # 191). At that time, the court entered a preliminary order of forfeiture. (Doc. # 192).

On May 27, 2011, Victoria and Charles Tinger ("the Tingers") filed a petition of interest in the forfeited funds. (Doc. # 194). On October 27, 2011, the government filed a motion to dismiss the third-party petition on the grounds that the Tingers lacked standing as defendant's unsecured creditors. (Doc. # 203). No response was filed.

On October 27, 2011, defendant was sentenced. (Doc. # 204). On the same date, the court signed a final order of forfeiture. (Doc. # 205). On November 8, 2011, defendant appealed. (Doc. # 208).

On November 9, 2011, the government filed a motion to amend or correct the judgment and final order of forfeiture. (Doc. # 211). On the same date, the court entered an amended final order of forfeiture. (Doc. # 213).

1 On December 1, 2011, the government filed a reply to their motion to dismiss the third-
2 party petition, attaching proof of service of the motion on the Tingleers and noting their failure to
3 respond. (Doc. # 216).

4 On January 6, 2012, the court granted the government's motion to dismiss the third-party
5 petition. (Doc. # 219). On February 1, 2013, the Ninth Circuit issued an opinion affirming
6 defendant's sentence. (Doc. # 333).

7 Federal Rule of Criminal Procedure 32.2(c) governs ancillary proceedings related to a final
8 order of forfeiture. Rule 32.2(c)(1) requires the court to conduct an ancillary proceeding where "a
9 third party files a petition asserting an interest in the property to be forfeited." Fed. R. Crim. P.
10 32.2(c)(1).

11 Pursuant to Rule 32.2(c)(1)(A), "the court may, on motion, dismiss the petition for lack of
12 standing, for failure to state a claim, or for any other lawful reason." Fed. R. Crim. P.
13 32.2(c)(1)(A). Rule 32.2(c)(2) provides that "[w]hen the ancillary proceeding ends, the court must
14 enter a final order of forfeiture by amending the preliminary order as necessary to account for any
15 third-party rights." Fed. R. Crim. P. 32.2(c)(2).

16 Further, pursuant to District of Nevada Local Rule 7-2(d), "the failure of an opposing party
17 to file points and authorities in response to any motion shall constitute a consent to the granting of
18 the motion." D. Nev. R. 7-2(d).

19 In the instant case, the court dismissed the third-party petition and the Ninth Circuit
20 affirmed the district court's order of forfeiture. (Docs. # 219, 333). The government now moves
21 the court to enter a final order of forfeiture pursuant to Rule 32.2. The government correctly notes
22 that the ancillary proceeding is complete and all appeals have concluded. (Doc. # 418). Further,
23 no response has been filed to the government's motion.

24 The government attaches a proposed amended final order of forfeiture to its motion. (Doc.
25 # 418-1). The order properly describes the notice provided by the government as to forfeiture in
26 this case. The order indicates the court's dismissal of the Tingleers' petition, noting that no further
27 petitions are pending and that the time for presenting such petitions has expired. (Doc. # 418-1).

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1 For the foregoing reasons, the court will therefore grant the instant motion and enter the
2 proposed final order of forfeiture.

3 Accordingly,

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the government's
5 motion for the court to enter the attached final order of forfeiture, (doc. # 418), be, and the same
6 hereby is, GRANTED.

7 The court will enter the final order of forfeiture.

8 DATED May 14, 2015.

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10 UNITED STATES DISTRICT JUDGE
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